IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. No. 425 of 2000

Judgment reserved on:4.9.2006

Date of decision: September 12, 2006

N.K.Chaurasia **Petitioner**

VERSUS

High Court of H.P. and another **Respondents**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting? YES

For the Appellant : Mr.Rajeev Sharma,Senior Advocate with Mr.Surinder Sharma,Advocate

For the Respondents : Mr.D.D.Sood, Senior Advocate with Mr.Paresh Sharma,Advocate

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Deepak Gupta, Judge

The petitioner in the year 1990 was working as a Civil Nazir in the court of Senior Sub Judge-cum-Chief Judicial Magistrate, Kinnaur at Reckong-Peo. He proceeded on leave on 9th March, 1990 and was expected to resume duty on 21.3.1990. He could not join duty and sent a wireless message to the Senior Sub Judge through the General Assistant to the Deputy Commissioner, Kinnaur that the keys of office almirah are lying in his residence and the office almirah may be opened after taking the keys from his house. The lock of

the residence was broken open and the keys were taken. Thereafter in the presence of Senior Sub Judge and some other court officials, the Reader of the court opened the official almirah. An inventory of the cash and other material found was prepared. The cash found was short by Rs.928/- when tallied with the cash book. Dues of two officials were also found not paid to them. When the petitioner rejoined on 23rd April, 1990, an explanation was called from him and the explanation not having been found satisfactory an inquiry was conducted against the petitioner on four charges. The main charge was that the cash found was short by Rs.928/-. The explanation of the petitioner was that in fact this amount of Rs.928/- was lying in a separate envelope behind the locker in the almirah. Another charge leveled against the petitioner was that he had not handed over the charge before proceeding on leave.

The Inquiry Officer acquitted the petitioner of other charges, but found that the petitioner had proceeded on leave without handing over the charge to any other official and also that the cash found in the almirah was short by Rs.928/-.

On the basis of the said inquiry, the disciplinary authority issued notice to the delinquent official and after receiving his explanation a penalty of stopping of three increments with cumulative effect was imposed upon him. The petitioner filed an appeal which was rejected. The order conveyed to the petitioner by the Registrar General of this court reads as follows:-

> "I am directed to refer to your letter No. DSJ/E/P.F./97-959, dated 19.2.1997 on the captioned subject and to say that the Service Appeal of Sh. Navneet Chaurasia, has been considered; in view of the fact that the Disciplinary Authority, in the present case, has taken the lenient view, in the matter of punishment, there is no justification to interfere with the same. Therefore, the appeal has been dismissed.
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> All the records received vide your letter No. DSJ/E/P.File/1998-238, dated 24.2.1998, containing three files, are returned herewith.
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> The appellant may be informed accordingly."

The petitioner filed a review petition which was also rejected. Hence the present writ petition.

Many contentions have been raised on behalf of the petitioner by Mr.Rajeev Sharma, learned Senior Advocate, appearing on his behalf. However, since I

propose to dispose of the writ petition on a short ground, I need not go into the other contentions.

The main contention raised by Mr.Rajeev Sharma, learned Senior Advocate, is that the appellate authority has not considered the appeal on merits at all. He has made a reference to the appeal filed by the petitioner and according to him none of the points raised in the appeal have been dealt with by the appellate authority. I have also seen the original record of the case. It is clear from the communication sent to the petitioner that the only ground given for rejecting the appeal is that since the disciplinary authority has taken a lenient view in the matter of punishment, there is no justification to interfere with the same. This apparently shows that only the question of punishment was considered by the appellate authority. The petitioner had raised a number of other questions in the appeal. None of those questions have been dealt with by the appellate authority.

Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules reads as follows:-

“27. Consideration of appeal:

(1) x x x x x x x x x x x x x x x x x x x x x x x

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

x x x x x x x x x x x x x x x x x x x x x x x"

The apex court in **R.P.Bhatt Vs. Union of India and others, (1986) 2 S.C. C. 651** while dealing with the aforesaid rules held that where the aforesaid rules are applicable the requirements of rule 27(2) must be complied with. It held as follows:-

"4. The word `consider' in Rule 27(2) implies `due application of mind'. It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the

Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in Clauses (a), (b) and (c) thereof.

5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director-General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of Cl. (c) of Rule 27(2), viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

In **Ram Chander Vs. Union of India and others AIR 1986 SC 1173** the apex court held as follows:

> "9. . . . . Here, Rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, Rule 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall `consider' as to the matters indicated therein. The word `consider' has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision."

It has been contended on behalf of the respondent that in the present case the appellate authority was only affirming the order of the disciplinary authority and, therefore, reasons need not be given. It has also been contended that the reasons can be culled from the file. I am not in agreement with this contention. Even in both the cases cited hereinabove, the appellate authority had agreed with the order of the disciplinary

authority, but the apex court held that the duty to give reasons is an incident of judicial process and since the appellate authority is exercising quasi judicial functions which have grave civil consequences even in a case of affirmation, it is bound to give reasons. The apex court also held that reasons are required to be given in view of the requirements of Rule 27(2) of the CCS CCA Rules. This law has again been reiterated by the apex court in **Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and others (2006) 4 SCC 713** wherein the apex court was also dealing with a case where the appellate authority had agreed with the findings of the disciplinary authority. The apex court was considering the provisions of Rule 37 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 which are identical to Rule 27 of the CCS CCA Rules. The apex court held as follows:-

> "33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.
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> 36. The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require

> application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression "consider" is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive."

A perusal of the aforesaid law makes it clear that the order of the appellate authority should demonstrate whether the appellate authority has applied its mind and has satisfied itself to ensure that (i) the procedure laid down in the rules has been complied with (ii) that the findings arrived at by the Inquiry Officer are justified and (iii) that the penalty imposed is proportionate to the offence. A perusal of the order passed in the present case as well as the file shows that the appellate authority only considered the 3rd aspect of the matter and did not consider the first two aspects, though the petitioner in his appeal had challenged both the

procedure followed by the Inquiry Officer as well as the findings of the disciplinary authority.

For the reasons stated above, I am of the view that the order of the appellate authority is liable to be set aside. The appellate authority may consider the appeal in the light of the law referred to above and pass a reasoned order within 3 months from today.

The writ petition is disposed of in the aforesaid terms.

September 12, 2006(K) (Deepak Gupta), Judge